

## LEGISLATURE HAS SEVEN DAYS MORE.

Ruling On The Ninety-Day  
Question Accepted.

### LICENSE BILL BEFORE SENATE.

Non-Concur in Many House Amend-  
ments—Wine Bill Goes Back to  
Committee—Physicians Hauled Over  
Coals—Routine Work in House.

Eighty-third Day.

MONDAY, May 25.

The Senate received an invitation from the Geo. W. De Long Grand Army Post to attend the Memorial day exercises on Saturday. On motion of Senator McCandless the invitation was accepted.

The Committee on Passed Bills reported a number of measures presented to the President for signature.

The Public Health Committee reported favorably on the bill to regulate the practice of medicine and surgery. Consideration of the bill to provide for using the water of Waialua river was deferred till Tuesday.

The wine bill came up on second reading. Senator Baldwin wanted the bill referred back to the committee in order to make some provision for exempting beer from duty. Beer was a beverage with a small percentage of alcohol, and there was no reason why it should not be included.

Minister Damon said beer had nothing to do with the case. This is a bill that deals with wines, and he would like to see it pass on its merits. Neither the bill nor the reports of the committee said anything about beer, and it was useless to bring this new feature in.

Senator Schmidt opposed sending the bill back to the committee.

Senator Lyman thought the Liquor Commission report and bill covered the matter.

The bill was finally referred back to the committee by a vote of 11 to 2.

The license bill as amended by the House was then taken up. Sections 55, 56 and 57, relating to doctors and dentists, had been stricken out by the House. Senator McCandless moved not to concur. The motion was carried by a vote of 5 to 5.

Sections 68, 69 and 70, relating to license for lawyers, took the same course. Section 71, making the livery stable license \$50, and \$25 for other districts, the Senate failed to concur in. The Senate also failed to concur in the amendment by the House relating to boarding houses. Section 78, relating to the number allowed by private families, took the same course.

Section 79, relating to merchandise, was concurred in. The \$10 special license on tobacco, cigars and cigarettes was accepted. The Senate concurred in the amendment to the section relating to penalties.

The Senate did not concur in the milk license amendment; penalty for infringement on the law was accepted; non-concurrence in striking out Section 87; concurred in notary public license.

Section 101, relating to tailors, was stricken out by the House; Senate concurred. Section 102, making a special \$10 tobacco license, was accepted; draymen's license took the same course.

Section 108 was accepted as amended. The sections in which the Senate failed to concur were referred to a conference committee.

### AFTERNOON SESSION.

At the afternoon session, House bill No. 46, regulating the practice of medicine, came up for second reading with the report of the Committee on Public Health. The committee recommended that the bill pass.

Senator Holstein wanted to know why the word "herself" had been stricken out in the first section. This excluded ladies from obtaining a physician's license. He believed this was a physician's trust and clinch bill, and moved that it be indefinitely postponed.

Minister Damon said that the Attorney General had told him that many cases of malpractice had occurred, and a measure to regulate the practice of medicine was quite necessary. This bill prevented many so-called physicians from tinkering with people unless they have a proper license.

Senator Holstein said that what made him speak of the bill as a clinch bill was that in Section 3 the Board of Health could not accept the diploma of a physician without the recommendation of a board of examining physicians. This put the Board of Health and the applicant in the hands of three physicians, who could do what they liked.

Minister Cooper was called and stated that the word "herself" was left out because the word was unnecessary. The necessity for the bill had been evidenced by cases of malpractice that had come to the attention of the Board of Health.

Senator Rice—Would not this bill prevent people, not physicians, in the country districts giving medicine?

Minister Cooper—No, it would not. The word practice is a technical term and refers to people following a profession. The clause relating to gratuitous practice was inserted because certain people when taken up for malpractice might attempt to escape the penalty by the statement that they were not licensed physicians. Minister Cooper thought the bill was a wise one and was intended to give the Board of Health proper authority to guard the community against quacks.

Senator Holstein's motion to indefinitely postpone was lost, and Section 1 was passed as read. Section 2 passed.

Senator McCandless moved to strike out Section 3, which creates a board of

examining physicians. He thought this was making a double barreled trust. The Board of Health was competent to examine physicians.

Minister Cooper said this section was requested by the physicians of the Board of Health. They did not want to be placed in the position of passing upon the character of the physicians. The Dental Association had an examining board, and a medical examining board was the usual thing in other countries. The Board of Health wished to have the applicant examined by physicians entirely independent of the Board of Health.

Senator Baldwin thought this medical examining board was a good feature. Senator McCandless still maintained that Section 3 created a narrow physicians' trust. The Board of Health was competent to pass on the qualifications of physicians.

Minister Damon said the physicians in the Board of Health served without pay, and it was a relief for them to be free from passing upon the ability of men in their own profession.

Senator McCandless' motion to strike out was lost and the section passed as read.

In Section 5 Senator McCandless moved that the whole board of examining physicians be appointed for a year, and not for "one, two and three years." They should all be appointed for a certain period and all go out of office at the end of that time.

Minister Damon said that the method of appointing proposed in the bill was much better than creating a new board every one or two years.

Senator McCandless' motion was lost and the section passed as read, making the first appointments for one, two and three years and all subsequent appointments for three years.

Sections 5, 6, 7, 8, 9, 10 and 11 were passed with slight changes, as recommended by the committee. These sections relate to the administration of the law and provide for revoking licenses for cause, etc. The bill then passed the second reading as a whole. The third reading was set for Thursday.

President Wilder appointed Senators Waterhouse, Rice and Holstein to serve on the license bill conference committee.

Minister Cooper called attention to the fact that the Legislature had been in session eighty-three days instead of seventy-five, as stated in the minutes. The Executive had ruled that the ninety days should include the number of days since the Legislature was opened.

Senator Holstein wanted to know if the Executive would extend the time of the session.

The Minister replied that the President had not said he would not extend the session, but he was very desirous that the work of the session should be finished in the allotted time.

At the suggestion of President Wilder it was voted to change the minutes of the session to make the number of days agree with the ruling of the Executive.

### House of Representatives.

Shortly before the opening of the House yesterday morning a snap shot of the Representatives found them in the following positions:

Rep. Cluney watching Clerk Keola write out a check for him.

Rep. Kamaoaha trying to pull Rep. Winston's leg and falling.

Rep. Hala looking off into the distance and thinking of far-away Maui.

Rep. Winston feeling of a very sore spot on his right instep, which he says he got from working on Sunday.

Rep. Rycroft wondering as to the advisability of lighting a cigar.

Rep. Pall appearing to be busy.

House was called to order, but only six members being present, a tedious wait became necessary.

After reading of the minutes, Minister Cooper said that the Clerk had read the minutes of the "seventy-fourth" day. It should really be the "eighty-third" day. The days upon which there had been no sessions had not been taken into account. Only six days of the session remained.

Rep. Winston—Can the work be finished in that time?

Minister Cooper—That I am not prepared to say.

Rep. Rycroft—Would it be proper to ask the President now for an extension of time?

Minister Cooper—You had better wait a few days until near the completion of the work. You will then be able to state your case more forcibly.

The President spoke to me this morning and asked how the work was getting along. I answered that the House was working diligently.

He seemed very anxious that the work be completed within the allotted time.

Minutes of the previous day adopted with Minister Cooper's amendment.

A communication from the Senate announced concurrence of that body in House amendments to Senate Bill No. 41, relating to appropriations for bills unpaid prior to December 31, 1895; also, selections of Senators Brown, Lyman and Rice as a special committee on Senate Bill No. 9, relating to internal taxes.

Rep. Richards reported for the Committee on Passed Bills that the following had been presented to the President for consideration: Bills relating to extension of streets in Honolulu; footbinding; right of eminent domain; field and staff officers; joint resolution on annexation; appropriations for bills unpaid prior to December 31, 1895; extension of certain streets in Honolulu and reappraisal of certain homesteads.

Rep. Bond announced his intention to introduce a bill relating to blindness of infants.

An invitation was received from the Geo. W. De Long Post, No. 45, G. A. R., asking the House to participate in the observance of Memorial Day. The Secretary was instructed to answer the communication, thanking the Post for its kind invitation.

Section 44 of House Bill No. 47, relating to Bureau of Education, taken up for consideration. Minister Cooper had some suggestions to offer in amendment.

Section 44, the last, passed unani-

Awarded  
Highest Honors—World's Fair.  
Gold Medal, Midwinter Fair.

**DR. PRICE'S  
CREAM  
BAKING  
POWDER**

MOST PERFECT MADE.  
Pure Grape Cream of Tartar Powder. Free from Ammonia, Alum or any other adulterant.  
In all the great Hotels, the leading Clubs and the homes, Dr. Price's Cream Baking Powder holds its supremacy.  
40 Years the Standard.

**LEWIS & CO.,**  
Agents, Honolulu, H. I.

Bill passed second reading. Ordered typewritten.

Under suspension of rules Rep. Kamaoaha presented the following resolution:

Resolved, That the Sanitary Committee of the House be instructed to meet and confer with the Board of Health to find if there is any truth in the proposed scale of prices to be charged by the doctors for their services, as reported to have been adopted at a recent meeting of the doctors in session.

Rep. Kamaoaha explained that if the report was true, medical aid would be out of the question for a great many people. The license bill had been under the consideration of the House and the proposed license fee on doctors had been stricken out. One doctor had told the members that the matter of fees was simply a fabrication of the newspapers and that there was absolutely no truth in the thing at all. It was the opinion of Rep. Kamaoaha that the Sanitary Committee should confer with the Board of Health to seek information as to whether the doctors intended charging the proposed fees and to gather other points in regard to the matter. Resolution unanimously adopted.

Rep. Pall asked for leave of absence, on account of illness in his family. Granted.

In the Supreme Court of the Hawaiian Islands.

March Term, 1896.

C. B. MAILE and POLOAIEA V. CHIN WO COMPANY, LUM SING, TIN WO, PAN LIEN, TUCK CHANG, HEE SUN and CHIT YEE.

Before JUDD, C. J., FREAR and WHITING, JJ.

In an action for rent upon a lease a tenant may show by way of defense (1) that the estate of his landlord had determined; or (2) that he had abandoned possession of the premises and given notice thereof to his landlord, and had since in good faith attorned to one who had a paramount title and immediate right of possession.

OPINION OF THE COURT.  
BY JUDD, C. J.

This is an action of debt to recover rent on a written lease for a term.

Several natives living in Waialua, Oahu, claiming to own various separate parcels of land joined in making a lease of the same to a number of Chinese. The rent was to be at a certain sum per acre of land to be cultivated and used as a rice plantation. Among the lessors was one Kaialaula, claiming some nine acres of the land described in Royal Patent No. 333. The lease is dated July 7, 1890, and is for the term of twenty years. Kaialaula, shortly before his death in 1894, made a conveyance of this land to the plaintiffs. The Chinese tenants paid rent to Kaialaula, and after his conveyance continued to pay some to Poloalea, one of the plaintiffs. The suit is to recover rent to date of the action. It was claimed by the defendants, and evidence was introduced tending to prove the same, that on receiving notice from persons claiming to be the owners that defendants' lessor, Kaialaula, had no title to the land, upon examination they were satisfied that the claim was true, and offered the possession of the land to Kaialaula's grantees (plaintiffs), and abandoned the same, and after a reasonable time took a lease from Hattie Kekino, Makala (w) and her husband, Puon, who claim to be the real owners, and offered to prove the heirship from Manana, the original patentee, as follows: That Manana devised the land by will, dated in 1855, to Kehaahwa, his wife; Kaanaana, the brother of Kehaahwa, inherited it from her, and the land passed by inheritance to Kaanaana's daughter, Makala, and his granddaughter, Hattie Kekino. The defendants also offered to prove that Kaialaula was a tenant at will, living on the land under Kaanaana, and offered certain probate records to prove that Kaialaula had admitted this title to Kaanaana, having given evidence to this effect in proceedings in probate in the matter of the estate of Kehaahwa in 1867.

The trial Court held that the evidence of the defendants did not prove a legal surrender, and that the defendants as lessees of the plaintiffs were estopped to deny their title, and refused to admit the evidence offered as to the title. The Bill of Exceptions disputes the correctness of these rulings. The position

of defendants is this: If they can show that Kaialaula and his grantees are estopped to deny the title of the real owner, the heirs of Kaanaana, plaintiffs being tenants at will and not having asserted title in themselves, this estoppel now enures to the benefit of defendants under their lease from the true owners; also they do not seek to deny the plaintiffs' title, but to show an affirmative title in themselves, from which any title the plaintiffs had was derived; also they claim that the title that Kaialaula had, as a tenant at will, was terminated by the lease of the true owners to defendants. The interesting question as to whether this evidence was properly excluded is raised for the first time in our courts.

It is a general and well settled rule of law that a tenant cannot dispute his landlord's title. Disputing the landlord's title means the setting up of an incompatible and paramount title to defeat it. But there are exceptions to this rule, and cases arise where the rule would seem to apply on first sight, but which have circumstances which defeat its operation. 2 Taylor, L. & T., Sec. 708. In *Mays v. Dwight*, 82 Pa. St., 462, it was held that where fraud or deception is practiced by the landlord in inducing the tenant to accept the lease, or where the lease was made in ignorance of a material fact, the tenant is not estopped.

In *People v. Howlett*, 76 N. Y., 574, a tenant successfully pleaded that his lease was made to cover usury. "A tenant is not estopped to set up that his landlord's title is legally extinguished or terminated so that it no longer exists." *Ryder v. Marshall*, 66 Me., 170.

*Lamson v. Clarkson*, 113 Mass., 348, is authority that a tenant is not estopped to show that his landlord's title was only an estate for the life of another, which expired during the term, and thereby to justify his not paying rent to the landlord subsequently accrued.

*Hillbourn v. Fogg et al.*, 99 Mass., 11, is to a similar effect. It is there held that a tenant is not estopped to deny that since his own entry into possession his lessor's title has expired, either by its own limitation, by the act of the lessor or by eviction by title paramount, and that when the estoppel is set up by one claiming as assignee of the lessor, the tenant may show that such assignment was ineffectual to pass the lessor's title. In this case Mrs. Hillbourn occupied her room as a tenant at will of Mrs. McGrath. McGrath made a written lease of the room to Fogg, who expelled Mrs. Hillbourn from the room. But Mrs. McGrath did not own the estate and was herself a tenant at will of the owner, and the court, per Gray, J., held that she (Mrs. McGrath) could not make a valid alienation which would give Fogg a better title than she had previously given to Mrs. Hillbourn. Mrs. Hillbourn was held not estopped to deny the validity of Mrs. McGrath's derivative title. This is followed in *Palmer v. Bowker*, 106 Mass., 317. *Bigelow on Estoppel*, p. 403, maintains the doctrine that a tenant is not estopped to allege that he was let into possession under a title from which the landlord's title was derived. The case from which this doctrine is taken is *Ford v. Ager*, 2 Hulston & Colman, 279. Here the defendants did not seek to dispute the plaintiff's title, but to show an affirmative title in themselves from which any title plaintiff had was derived.

To apply these principles to our case. On the defendants' statement Kaialaula was a tenant at will of the heirs of Kaanaana (the true owners of the land) when he made the lease to the defendants. The lease of the true owners to defendants terminated the tenancy at will of Kaialaula, and defendants may be permitted to show an affirmative title in themselves from the persons from whom their lessor, Kaialaula, derived his title. See also *Doe v. Higginbotham v. Barton*, 11 Ad. & E., 307, and *Holbrook v. Young*, 108 Mass., 83.

We think the defendants should have been allowed to prove the facts tendered.

The defendants also claimed that they notified the plaintiffs that they had ascertained that plaintiffs had no title, and offered the possession of the land to them and abandoned the possession, exercising no act of ownership thereon until they resumed possession under their new lease from the real owners. This was held by the court to be insufficient to show a surrender, the court holding that "a surrender must be by mutual agreement."

This is not accurate. An eviction to justify attornment may be actual or constructive. And a constructive eviction is when a lessee in order to prevent being actually expelled from the demised premises, yields the possession thereof, in good faith, to one who has a title paramount to that of the lessee and his lessor, and also a right to the immediate possession, and this is a good defense to an action for rent brought by the lessor. *Morse v. Goddard*, 13 Met., 177. In such case, says Shaw, C. J., where a tenant thus relies upon an ouster in pais, without judgment, he has the burden of proving the validity of the title of the person to whom he attorns, and that he acted in good faith and without collusion with the party entering. Of course, a mere voluntary attornment may not be pleaded. And in general the tenant should yield the possession to his landlord before taking a new lease from the real owner and claiming thereunder adversely to his former landlord.

2 Herman, Estoppel, Secs. 869-871.

On this misdirection we think the defendants are entitled to a new trial.

At the close of plaintiffs' case the defendants moved for a non suit on the ground that it was not shown who were the partners in Chin Wo Company. This motion was denied and exception taken. The action was brought upon a written lease against Chin Wo Company and others under the very names in which the lease was made, executed and acknowledged, and the defendants, including Chin Wo Company, answered under the same names. The lease was in evidence. Under these circumstances the motion was properly refused.

New trial ordered.

A. G. M. Robertson for plaintiffs.

Kinney & Ballou for defendants.

Honolulu, May 18, 1896.

## GLEANERS WORK FOR CHARITY.

Sale at Haelelea Lawn Nets  
Neat Sum of \$425.

### BRIGHT FLOWERS IN PROFUSION.

Artistic Booths Presided Over by  
Charming Helpers—Pretty Children  
in Rainbow Costumes—Hawaiian  
Band in Attendance—Event a Go.

The Gleaners are all wearing very happy countenances at present, for their lawn party at Haelelea Lawn Saturday afternoon, an event for which they worked with the energy that has characterized all their former efforts at gathering funds for Christian work, was a success beyond the hopes of the most sanguine.

As soon as the gates were opened at 2 p. m., people began to arrive, and at 3 o'clock the grounds were comfortably filled. Without counting those who had charge and assisted at the various tables, there were 320 people present.

The work of the Gleaners in putting up attractive booths and beautifying the grounds in various ways showed to good advantage and brought forth frequent expressions of merited praise.

The Hawaiian Band, stationed just to the right of the entrance, played delightful selections during the afternoon, which had the effect of putting every one in a very happy mood, especially when "Company D Minstrels" was played.

To the left and near one of the large trees on the lawn was the lemonade stand, calculated to entice the thirsty visitor. Miss Ellen Hopper and Miss Derby were in charge.

Next to this was the children's table, presided over by Miss Harriet Lewers, who was assisted by Miss Campbell, Miss Hartwell, Mrs. Basford and Jennie Angus. The booth was decorated with white muslin and branches of the pepper tree. Here were the festive Brownies peeping forth in many decorations, the irresistible top, the colored toys of various kinds and all little articles calculated to bring joy to the hearts of children.

Standing next to this, out in the center of the lawn, was the flower booth, by right and by common consent the prettiest on the grounds. Bulrushes for the lower part and coconut leaves for the top, and all this bound about a frame of algaroba branches, gave to the booth the decided appearance of rusticity. Here and there in places calculated to present the most artistic appearance, were placed bunches of lilies, white and purple asters or other beautiful flowers, while intertwined among the coconut leaves and hanging gracefully from various points were sprays of vines. A long table at the mauka side of the booth was simply laden with maile, ilima and other kinds of leis, together with bunches of various flowers.

To the right was a smaller table entirely given up to button-hole bouquets. Misses Sadie Carter, Pauahi Judd, Mary Carter and Clara Fuller were kindly assisted by Messrs. Wm. Lewers, Armstrong Smith, B. Marx and Ensign H. H. Hough of the U. S. S. Adams, who did much of the decorating.

Opposite the flower booth, on the other side of the driveway, was the refreshment tent, an indispensable part of the lawn party. Mrs. Kleugel, Mrs. Richards, Mrs. Thurston and Miss Sexton were assisted by a number of girls, who waited most gracefully on the ice-cream-an- cake-seeking part of the visitors.

On the mauka part of the grounds and nearest the stone wall was a table prettily arranged under a breadfruit tree and laden with candy in little paper boxes. All the sweetmeats displayed long before the end of the party. Mrs. T. W. Hobron, Mrs. A. E. Nichols, Misses Paty and Smith were the ladies who had charge of this table.

Next came the paper booth, with Mrs. H. H. Williams, Misses Girvin, Huestace, Kelley and Alexander in charge. This place was one of the main attractions of the afternoon on account of the fine work in paper that has lately become such an industry.

The tea garden under the palms was presided over by Mrs. Jordan, Mrs. Chapin, Misses Ada Whitney, Ethel Rice and Edith Bond. Many a cup of the delightful beverage was taken in this pretty little spot.

The fancy table, just mauka of the house, was covered with Hawaiian and American flags artistically draped. Mrs. Ned Jones and Miss Agnes Judd attended to the wants of people here, and succeeded in taking in the largest sum of money of any table on the grounds.

Misses Gilman and Forbes attended the gate.

The reception committee was composed of Mrs. Parmelee, Mrs. N. Damon, Miss Judd, Misses Belle Carter and Annie Forbes, and the executive committee of Miss Bolles and Miss Rhoda Green.

The main feature of the afternoon was the "Floral Rainbow," in charge of Misses Snow, Sorenson and Gilman. It was given twice during the afternoon.

But few of the people present had any idea of what the entertainment was to be, and were consequently agreeably surprised when they saw four little girls dressed in red come marching out of the front door of the house. They took their stand before the mound situated in front of the house and recited a verse on the roses, finishing by singing a little song on the same subject, and walking up on the mound, the tallest girl at the top and ranging on down to the smallest one at the foot. Next

came four girls in orange and representing tulips, and following these, groups of four in yellow, green, blue, indigo and violet, representing dandelions, snowballs, corn-flowers, morning-glories and violets respectively. Each group recited a verse, sang a song and ascended the mound. Then came a song in concert, closing with the sudden display of colors in paper corresponding with the various dresses and forming a very pretty rainbow. Edwin Hall and Morris Damon played on their violins to furnish the requisite key for the children.

Following were the amounts taken in at the various tables and booths: Gate, \$75.50; lemonade, \$8.00; children's booth, \$48.65; flower booth, \$35.00; refreshment tables, \$81.20; candy, \$41.50; paper, \$62.00; fancy table, \$113.35; tea garden, \$20.25. Total, \$485.45. Expenses should not amount to much more than \$60.00, leaving the Gleaners the neat little sum of \$425.00 as a reward for their labor.

### LOCAL BREVITIES.

If you are interested in plows, read what the Pacific Hardware Co. says about the Secretary.

Postmaster General Oat left by the W. G. Hall yesterday morning for a tour of inspection of the postoffices on Hawaii.

In the match race yesterday between Schumann's Judah and Tom Hollinger's Margaret, the former won in three straight heats. Time, 2:47, 2:41 4-5, 2:35.

W. S. Luce will sell the celebrated race animals, Royallist and Antidote, at noon on June 1. This is a rare opportunity for race men to get hold of good stock.

Dr. Russell does not consider illness among plantation laborers the result of neglect on the part of managers, but "to our wrong conception of health and disease."

George Davis, uncle of Lucy Peabody, died on Saturday last and was buried from his late residence, Vineyard street, at 4:30 yesterday afternoon. E. A. Williams conducted the funeral.

The Legislature has only six more working days, as explained by Minister Cooper in the House of Representatives yesterday morning. The President does not wish to extend the time.

In the match shoot between the Police and Sharpshooters at Iwilei butts Saturday afternoon the latter won with a score of 403 to 401. The police are not at all discouraged and are anxious to have another match.

Consul General Mills requests that parties in the city who loaned Miss Field books or pamphlets to send a description of the same to him, in order that he may return the articles to the proper parties.

The real property in the Gibson estate will be sold at auction, under decree of foreclosure and sale, in front of Alioli Hall on August 26, at noon. A description of the property appears in another column.

Since the Medical Association adopted its new schedule of prices the patent medicine dealers are looking for a big boom in business. A book agent selling "Every Family Its Own Doctor" now has an opportunity to make a ten strike.

### How to Treat a Wife.

(From the Pacific Health Journal.)

First, get a wife; second, be patient. You may have great trials and perplexities in your business, but do not therefore carry to your home a cloudy or contracted brow. Your wife may have trials, which, though of less magnitude, may be hard for her to bear. A kind word, a tender look, will do wonders in chasing from her brow all clouds of gloom. To this we would add, always keep a bottle of Chamberlain's Cough Remedy in the house. It is the best, and is sure to be needed sooner or later. Your wife will then know that you really care for her and wish to protect her health. For sale by all druggists and dealers. Benson, Smith & Co., agents for Hawaiian Islands.

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